

IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY

Nasir Baqi,

Plaintiff,

v.

Jeremy Knight,

Defendant,

Virginia Lowman,

Defendant.

CIVIL ACTION NO. JP16-10-000613

Submitted: March 16, 2010

Decided: March 16, 2010

TRIAL DE NOVO

Nasir Baqi, appeared *pro se*.

Jeremy Knight, appeared *pro se*.

Virginia Lowman, appeared *pro se*.

ORDER

Arndt, Magistrate
Darling, Magistrate
Murray, Magistrate

A trial *de novo* pursuant to 25 Del. C. § 5717(a)¹ was held on March 16, 2010, in reference to a landlord/tenant petition filed by Plaintiff, Nasir Baqi (hereinafter referred to as "Landlord"), against Defendants, Jeremy Knight and Virginia Lowman (hereinafter referred to as "Tenant or Tenants").

Landlord's Petition/Testimony

Landlord is seeking rent arrears, possession of 125 South East Street Smyrna, DE, and court cost of \$40.00.

Landlord testified that the Tenants are in rent arrears for the months of October 2009 (\$244.00), November 2009 (\$750.00), December 2009 (\$750.00), January 2010 (\$750.00), February 2010 (\$750.00), March 2010 (\$400.00), plus late fees for each month of \$25.00. Landlord sent the Tenants a five day letter² on January 26, 2010,³ demanding said back rent be paid in full within five days. Landlord sent a second letter⁴ to the Tenants on January 31, 2010, outlining that he was contacted by Smyrna Town Officials regarding a complaint lodged by Tenant Knight for "leakage of his residence". Landlord further provided two documents regarding needed repairs to the unit that purported to be

¹ 25 Del. C. § 5717(a). *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote...

² 25 Del. C. § 5502(a). **Landlord remedies for failure to pay rent.** A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

³ Plaintiff's exhibit #1, Five day letter with proof of certified mailing attached.

⁴ Plaintiff's exhibit #2, letter to Defendants with proof of certified mailing attached.

from Martin Toledo of Martin's Home Improvement. The first document⁵ appears to be a hand written bill for three repairs completed to the rental unit on January 30, 2010 and the second is a letter⁶ addressed to the Court stating the contractor was unable to finish all repairs as he was asked to leave the unit prior to completing all repairs.⁷

Tenant's Testimony

Tenant, Jeremy Knight, testified on behalf of the Tenants that they sent three notices to the Landlord placing him on notice that necessary repairs were needed to the rental unit. Letter #1⁸ dated June 5, 2009, outlines five specific repairs needed at the rental unit. Letter #2⁹ dated September 27, 2009, outlines the exact same five repairs as the previous letter with one additional repair. Letter #3¹⁰ dated January 25, 2010, outlines the exact same six repairs as the previous letter with one additional repair now totaling seven. This letter was mailed certified and was returned to the Tenants by the Post Office after the Landlord failed to pick up the letter at the Post Office. Tenant Knight testified that they withheld rent for the months in question due to the Landlord's failure to make repairs to the rental unit. In addition to his testimony about the notices sent to the Landlord, the Tenant submitted a "NOTICE OF VIOLATION AND CORRECTION"¹¹

⁵ Plaintiff's exhibit #3.

⁶ Plaintiff's exhibit #4, entered without objection from the Defendants.

⁷ No further testimony was provided to the Court establishing if the contractor was denied entry at a later date.

⁸ Defendant's exhibit #1.

⁹ Letter #2 was submitted with letter #1 and marked as Defendant's exhibit #1.

¹⁰ Defendant's exhibit #2 with proof of certified mailing.

¹¹ Defendant's exhibit #3.

dated February 1, 2010, from the Town of Smyrna. Finally, the Tenant stated that between the original trial and this appeal they have rented a new unit in Dover and are vacating 125 South East Street, Smyrna, DE.

Review and Analysis

After reviewing the testimony and evidence the Court finds the Tenants have improperly withheld rent. The total rent withheld was \$3644.00. There are no provisions in the Landlord/Tenant Code which permit a Tenant to withhold 100% of rent from a Landlord. The Court further finds the Landlord initially made no attempts whatsoever to make repairs to the rental unit after being placed on notice by the Tenants. The Landlord also failed to pickup the certified mail (notice of repairs contained therein) from the Post Office. In fact, the Landlord did not take any action until he was contacted by an Official from the Town of Smyrna about violations existing at the rental unit. Upon notice of these violations from the Town of Smyrna, the Landlord immediately notified the Tenants they were in rent arrears and he was seeking possession of the unit. This is a Retaliatory Action on behalf of the Landlord towards the Tenants as over six months passed between the Tenants' first notice to the Landlord about the violations and the Town of Smyrna's contact with the Landlord provoking him to take action. Pursuant to 25 Del. C. § 5516(a)(1) the Tenants complained in good faith placing their concerns in writing to the Landlord and therefore are "entitled to recover three months' rent or treble the damages sustained by the tenant."¹² Three months of rent equals the sum of \$2250.00. Possession is no longer an issue for this Court's consideration as the Tenants admit they have rented a new unit and are vacating the 125 South East Street, Smyrna, DE.


¹² 25 Del. C. § 5516(12)(e).

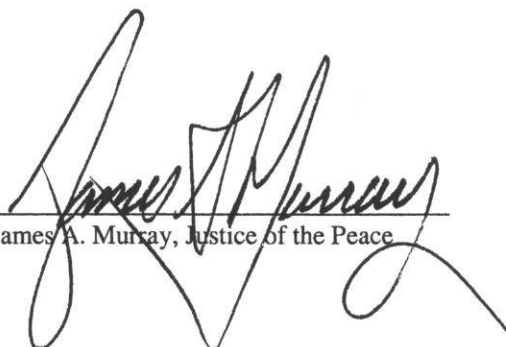
Conclusion

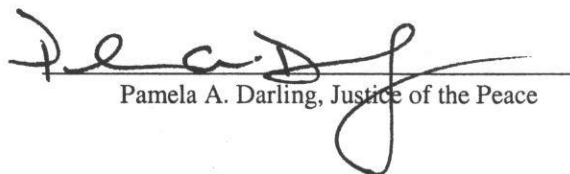
Based on the Court's fact finding inquiry, the Court hereby enters judgment for the Landlord in the amount of **\$1394.00** for rent arrears. The Landlord was owed \$3644.00 however this amount is offset in the amount of \$2250.00 (\$750.00 per month rent x 3) as the Court finds the Landlord committed a Retaliatory Act. Possession of 125 South East Street, Smyrna, DE **shall return** to the Landlord as the Tenants are vacating the unit. Whereas the Landlord was found to have committed a Retaliatory Act he **shall** bear the burden of costs for this petition.

The Court announced its decision in open court.

IT IS SO ORDERED this 16th day of March, 2010.


Ernst M. Arndt, Justice of the Peace


James A. Murray, Justice of the Peace


Pamela A. Darling, Justice of the Peace

Plaintiff's and Defendant's original exhibits are attached respectively with a copy of this order.